

TERMS AND CONDITIONS OF PURCHASE ORDER

THIS ORDER CONSTITUTES AN OFFER BY SAANKHYA LABS PVT LTD and its affiliated companies ("Saankhya") TO PURCHASE FROM SELLER THE ITEMS AND/OR SERVICES SPECIFIED IN THIS ORDER, SUBJECT TO THE TERMS AND CONDITIONS HEREOF. THIS ORDER IS NOT INTENDED AND SHALL NOT OPERATE AS (1) AN ACCEPTANCE OF ANY PRICE QUOTATION OR OTHER ORAL OR WRITTEN OFFER BY SELLER, OR (2) A CONFIRMATION OF ANY PREVIOUS COMMUNICATION OR AGREEMENT, WHETHER ORAL OR WRITTEN, BETWEEN THE PARTIES HERETO.

1. Acceptance: Seller's acceptance of this order will be indicated by: (a) shipment of any part of this order, or the furnishing of services required; (b) signing and returning the acknowledgment copy of this order; or (c) any other act or expression of acceptance. Prior to acceptance hereof, this order shall remain revocable in whole or in part by SAANKHYA LABS for any reason whatsoever. Acceptance of this order is expressly limited to the terms and conditions contained herein, and any term, condition, quotation or proposal hereafter submitted by Seller that is inconsistent with or in addition to the terms and conditions proposed herein is objected to and is hereby rejected.
2. Entire Agreement: This order, including any pertinent drawings, specifications, or the like, shall upon acceptance by Seller constitute the final, complete, and exclusive agreement between the parties hereto and shall supersede all prior offers, negotiations, and agreements relating to the subject matter hereof. It is expressly agreed that no prior or contemporaneous agreement or understanding, whether written or oral, shall contradict, modify, supplement, or explain the terms and conditions contained herein.
3. Shipment: Unless otherwise specified, Seller shall package all items to be delivered hereunder at no additional charge to (a) assure safe arrival at their ultimate destination; (b) permit efficient handling and secure the lowest transportation costs; and (c) comply with all applicable Interstate Commerce Commission regulations. Damage to any items resulting from improper packaging will be charged to Seller.
4. Delivery: Seller's deliveries are to be made both in the quantities and at the time specified in this order or a contractual modification hereof. Time is agreed to be of the essence. If Seller has reason to believe that deliveries will not be made as specified, written notice concerning the cause of delay and estimated delivery date shall immediately be given to SAANKHYA LABS. If delivery is not made at the required time, SAANKHYA LABS reserves the right to cancel this order, purchase elsewhere, and hold Seller accountable for any damages. If SAANKHYA LABS believes that Seller will not meet the specified delivery schedule or if Seller fails to meet the schedule, Seller shall, at SAANKHYA LABS's request, ship via expedited routing at Seller's sole cost.
5. Advance Manufacture and Shipment: Without SAANKHYA LABS's prior written consent, Seller shall not manufacture items for this order in advance of Seller's normal lead time for delivery in accordance with the delivery schedule established herein. SAANKHYA LABS will not be responsible for materials delivered or work performed on SAANKHYA LABS's behalf without a written order. If any item is received by SAANKHYA LABS in advance of the delivery schedule, SAANKHYA LABS may, at its option, either retain such items or return them to Seller at Seller's risk and expense. If retained, the time for payment and any discount shall be based on scheduled delivery dates.
6. Payment: Unless otherwise expressly stated on the reverse side hereof, the prices set forth in this order include all charges for packaging and transportation to the FCA point. Invoices in duplicate shall be mailed to SAANKHYA LABS's accounting department when items are shipped. The time for payment of Seller's invoices shall commence on the later of (a) the date set by the delivery schedule herein for receipt of items or services purchased; (b) the date of actual receipt by SAANKHYA LABS of items or services purchased; or (c) the date of receipt by SAANKHYA LABS of a proper invoice for items or services purchased; provided, however, that such items or services fully comply with the requirements of this order. Any payments made by SAANKHYA LABS for part or all of the items or services ordered are advances subject to return in the event of rejection of the item or service by SAANKHYA LABS. Any adjustments in Seller's invoices due to shortage, late delivery, rejection, or other failure to comply with the requirements of this order may be made by SAANKHYA LABS before payment. SAANKHYA LABS may withhold funds otherwise due to Seller hereunder if Seller is in default of any of the terms and conditions contained herein so long as such default exists.
7. Inspection and Acceptance: Unless otherwise specified on the face hereof, all items or services ordered are subject to inspection and test by SAANKHYA LABS prior to shipment at Seller's plant and at all other times and places where practical, and are subject to final inspection and acceptance at SAANKHYA LABS's plant or other destination point designated by SAANKHYA LABS notwithstanding any prior payment or prior inspection. If any inspection or test is made on Seller's premises, Seller, without additional charge, shall (a) provide all reasonable facilities and assistance for the safety and convenience of SAANKHYA LABS and its designated inspectors; (b) make available to the inspectors copies of all drawings, specifications and processes applicable to the items ordered; and (c) promptly furnish SAANKHYA LABS with any and all resulting inspection certificates. Acceptance by SAANKHYA LABS of any goods or services shall occur only when SAANKHYA LABS notifies Seller that such goods or services conform to the requirements of this order. Inspection or test of, or payment for any goods or services shall not constitute an acceptance thereof.
8. Warranties: Seller warrants that all items, articles, materials and services supplied by Seller will strictly conform to the designs, specifications, drawings, samples or other descriptions furnished or adopted by SAANKHYA LABS and will be merchantable, of good materials and workmanship, free from defects and fit for their intended use, and shall be free and clear of any and all liens. Seller assumes all risk that Seller will be able to comply with such designs, specification, drawings, samples or other descriptions or services covered by this order. Such warranties shall be effective for a period of one year after delivery or such longer period described by law or additional agreement. Such warranties, however, shall not be deemed to limit any express or implied warranties of additional scope given by Seller to SAANKHYA LABS. All warranties, both express and implied, shall be construed as conditions as well as promises. Such warranties, together with all other warranties of Seller, shall run in favor of SAANKHYA LABS, its successors, assigns, customers and users. Corrected or replacement items shall be subject to the provisions of this paragraph in the manner and to the same extent as items originally delivered under this order. Acceptance of any items or services by SAANKHYA LABS shall not be deemed to alter or affect the obligations of Seller or the rights of SAANKHYA LABS, its successors, assigns or customers, under Seller's warranties, or to waive any such rights with respect to any latent defects. Seller agrees to indemnify and hold harmless SAANKHYA LABS, its successors, assigns and customers against and in respect of all claims, actions, demands, losses, cost, expenses, liabilities, and damages resulting from any breach of any of the foregoing warranties or any other warranties, express or implied.
9. Risk of Loss: Notwithstanding any agreement to pay freight or other transportation charges, the risk of loss, deterioration or damage, as well as the obligation to insure, shall be borne by Seller until the goods have been delivered to SAANKHYA LABS at the FCA point specified on the reverse side. Shipment and other costs of all items returned to Seller for whatever reason shall be borne by Seller, with the risk of loss passing to Seller upon the earlier of (a) notice of rejection is given to Seller by SAANKHYA LABS; or (b) the time that the items are delivered to a carrier for return to Seller.
10. Modifications: SAANKHYA LABS shall have the right at any time before completion of this order to make changes in quantities, drawings, designs, specification, place or time of delivery, and method of shipment upon giving written notice to Seller of such changes. If, as a result of any such change, SAANKHYA LABS shall claim a decrease or Seller shall claim an increase in the total purchase price of this order, or if Seller shall claim an extension of time for its performance hereunder, the party so claiming shall notify the other in writing of its claim for adjustment within thirty days after the change in this order, and Seller and SAANKHYA LABS shall attempt to agree on an equitable adjustment. Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, such cost must be supported by inventory schedules and submitted within three months from the date of change. SAANKHYA LABS may prescribe the manner of disposition of such obsolete or excess property. Seller shall immediately proceed with SAANKHYA LABS's change order and shall not withhold deliveries of any items of work pending such equitable adjustment. NO CHANGE IN QUANTITIES, PRICE OR DELIVERY DATES SHALL BE BINDING UPON SAANKHYA LABS UNLESS FIRST APPROVED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SAANKHYA LABS.
11. Taxes: Except as otherwise specifically provided herein, the prices set forth on the reverse side include all liability of SAANKHYA LABS for payment or reimbursement of any and all taxes or similar charges now or hereafter imposed by any governmental authority in connection with this order. Any such liability not included in the prices set forth herein shall be paid or reimbursed by Seller.
12. Prices: Seller represents and warrants that the prices charged in this order and the terms hereof are no less favorable than the prices charged and terms thereof provided by Seller to other customers in transactions involving similar items in comparable quantities and delivery schedules.
13. Indemnity: Seller agrees to indemnify and hold harmless SAANKHYA LABS, its successors, assigns and customers, against and in respect of all claims, actions, demands, losses, costs, expenses, liabilities and damages, including reasonable attorneys' fees, resulting from (a) any actual or claimed trademark, trade name, patent or copyright, or other intellectual property infringement, or any litigation or proceeding based thereon, with respect to any of the items covered by this order, and (b) any actor omission of Seller, its employees, agents, or subcontractors.
14. Property Furnished by SAANKHYA LABS: All designs, documents, drawings, plans, materials, tools, equipment, specifications, and other items and all information contained therein, furnished or specifically paid for by SAANKHYA LABS, and all reproductions thereof, shall at all times (a) be the sole property of SAANKHYA LABS and shall be clearly identified as such by Seller and segregated by Seller from Seller or Seller's other customers; (b) be regarded and preserved as confidential and used by Seller only in the design, development or production of items or work called for herein and for no other purpose; (c) not be transmitted, reproduced, used or disclosed to any third party by Seller (except its own employees as may be necessary for the performance of this order) without prior written approval by SAANKHYA LABS; and (d) be returned to SAANKHYA LABS upon request or in any event no later than completion of this order, at Seller's expense, in as good condition as when received by Seller, ordinary wear and tear excepted. Seller shall pay SAANKHYA LABS the replacement cost of SAANKHYA LABS's property damaged while in Seller's possession. Seller agrees to supply detailed statements of inventory with respect to such property when requested by SAANKHYA LABS. SAANKHYA LABS does not warrant the accuracy of any information, designs, specifications, drawings, tools, equipment, or fixtures that it furnishes. All items of work required by this order must strictly conform with the specifications of this order.
15. Use by SAANKHYA LABS: SAANKHYA LABS's successors, assigns and customers, may subject all items or services to further manufacture, may combine them with other articles or put the item to any use whatsoever, and no royalties or additional compensation shall be payable by SAANKHYA LABS as a result. All unpatented or uncopyrighted ideas, information, designs, devices, prints, drawings and technical data concerning Seller's products, methods or manufacturing processes shall be deemed to have been disclosed or furnished as part of the consideration of this order, and SAANKHYA LABS shall be free to use and disclose the same without any liability or payment therefor.
16. Insurance: Seller will carry fire and extended coverage insurance against risk of damage to any SAANKHYA LABS property in the possession of Seller. With respect to property of SAANKHYA LABS that is in Seller's possession or control, any insurance proceeds shall be payable directly to SAANKHYA LABS.
17. Price Reductions: If, prior to the termination of this order, Seller makes a general price reduction, at stated quantities, of any of the products or services being purchased under this order, an equivalent price reduction shall apply to this order for similar quantities placed under this order and unshipped or unperformed at the time of such general price reduction. Such reduced prices shall apply for the duration of this order or until such prices are further reduced.
18. Confidentiality of Order: Seller acknowledges that SAANKHYA LABS's use of the items and/or services to be provided pursuant to this order and SAANKHYA LABS's use of Seller as a source for such items and/or services constitute important trade secret information of SAANKHYA LABS and Seller agrees that it will not disclose to any third party (except to the extent that disclosure to employees of Seller is necessary for the performance of this order) the fact that Seller furnished or will furnish SAANKHYA LABS with the items and/or services specified herein, unless Seller first obtains written consent thereto from SAANKHYA LABS.
19. Demand for Reasonable Assurances: When reasonable grounds for insecurity arise with respect to Seller's performance, SAANKHYA LABS may in writing demand assurance of due performance, and SAANKHYA LABS may suspend its obligations hereunder until such assurance is received. If Seller fails to provide such assurance within 15 days following receipt of such written demand, such failure shall constitute an anticipatory repudiation of this contract.
20. Remedies: SAANKHYA LABS shall have the right to reject any items or services found to be defective in material or workmanship or otherwise not in compliance with the requirements of this order. SAANKHYA LABS may, at its option and without affecting its rights to recover damages for Seller's breach of contract, (a) hold any rejected items at Seller's risk and expense pending receipt of Seller's instructions regarding disposition of the items; (b) return any rejected items to Seller at Seller's expense for credit at full invoice price; (c) retain and correct any rejected items with an appropriate reduction to be made in the purchase price to reflect such costs of correction; (d) resell any rejected items forthwith without awaiting instructions from Seller regarding the disposition of such goods; or (e) require replacement or correction by Seller, if any goods fabricated by Seller from material furnished by SAANKHYA LABS are rejected due to Seller's fault or failure to meet the requirements of this order.
21. Replacement cost: Seller shall pay SAANKHYA LABS the replacement cost of the material so furnished. All transportation charges on returned items shall be paid by Seller. In addition to the foregoing, in the event of a breach of any obligation hereunder by Seller, SAANKHYA LABS shall have all rights and remedies provided by Division 2 of the California Uniform Commercial Code and all other remedies available at law or in equity. In the event of breach or any obligation hereunder by SAANKHYA LABS, Seller shall have all rights and remedies provided by Division 2 of the California Uniform Commercial Code unless modified by this order, except that the measure of Seller's damages for SAANKHYA LABS's wrongful rejection by repudiation of terms shall be limited to the lesser of the difference between the market price at the time and place of delivery and the unpaid contract price, less expenses saved in consequence of SAANKHYA LABS's rejection, with due allowance for cost incurred and due credit for payments or proceeds of resale.
21. Prime or Other Contracts by SAANKHYA LABS: It is expressly understood and agreed that (a) this order is issued for the purpose of enabling SAANKHYA LABS to perform its prime or other contract or contracts, and (b) any default hereunder by Seller may cause a default by SAANKHYA LABS in the performance of such contracts. Seller shall be liable to SAANKHYA LABS for any and all damages or losses SAANKHYA LABS suffers or incurs as a result of Seller's default.
22. Compliance with Laws: All obligations hereunder shall be performed in accordance with all applicable laws, rules, regulations or orders, including without limitation, those relating to non-discrimination and equal opportunity in employment, workplace safety, and environmental protection. Seller agrees to indemnify and hold SAANKHYA LABS harmless from any loss, damage, liability, claim, fine, penalty, or expense which directly or indirectly results from Seller's failure to comply with any such law, rule, regulation, or order.
23. Assignment: Seller may not assign or otherwise transfer or cause to be transferred in whole or part any of its rights or obligations hereunder without the prior written approval of SAANKHYA LABS. Seller shall not contract any portion of the work to be performed under this order without SAANKHYA LABS's prior written approval. Any such approval given shall not be deemed to waive or prejudice SAANKHYA LABS's rights to recovery or set-off of claims arising out of this or any other transaction and to settle or adjust matters with Seller without notice to any such assignee.
24. Termination: SAANKHYA LABS may terminate work under this order in whole or in part at any time upon giving written notice thereof to Seller. Upon such termination by SAANKHYA LABS, Seller shall stop work immediately, notify subcontractors to stop work, and protect any property in Seller's possession in which SAANKHYA LABS has or may acquire an interest. Except where such termination is occasioned by the occurrence of a contingency the non-occurrence of which is a basic assumption on which this contract is made, or by default or delay of Seller, Seller may claim reimbursement on forms which SAANKHYA LABS will furnish on request for (a) Seller's actual costs incurred up to and including the date of termination which are properly allocable under unrecognized accounting practices to the terminated portion of this order, including liabilities to permitted subcontractors previously billed or paid for, but excluding any charge for interest or any materials that Seller may be able to divert to others; and (b) reasonable profit on work actually done by Seller prior to such termination, the rate of which shall not exceed the rate used in establishing the original purchase price. The total amount of such reimbursement shall not exceed the purchase price for items covered hereby which are subject to such termination. Seller may terminate work under this order only if SAANKHYA LABS consents thereto in writing or if such termination results from SAANKHYA LABS's material breach of this contract.
25. Contingence: The occurrence of any contingency that might make Seller's performance under this order impracticable or impossible, or the destruction of any items ordered herein, shall not relieve Seller of its obligations under this order.
26. Insolvency of Seller: If during the term of this contract, Seller shall become bankrupt, insolvent or makes an assignment for the benefits of creditors, this contract shall be deemed breached by Seller and SAANKHYA LABS shall have the right to terminate this contract by serving written notice of termination. Such termination shall not affect any claim for damages available to SAANKHYA LABS.
26. Allocations: In the event that Seller's deliveries required hereunder are made impracticable in whole or in part by the occurrence of a contingency, the non-occurrence of which was a basic assumption on which this agreement is made, or by compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it later proves to be invalid), Seller will first meet all of SAANKHYA LABS's requirements hereunder prior to any allocation of deliveries among Seller's customers. The occurrence or non-occurrence of such an event shall not affect SAANKHYA LABS's rights to terminate this order as provided herein.
27. Miscellaneous: No failure or delay by SAANKHYA LABS in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any other exercise of any other right, power or privilege. SAANKHYA LABS's failure to object to any provision contained in any communication from Seller shall not be deemed an acceptance of such provision or a waiver of the provisions hereof. The laws of the state of California, U.S.A., except its rules regarding choice of law, shall govern the validity of this agreement, the construction of its terms and the interpretation of the rights and duties of the parties. SAANKHYA LABS may at any option at any time apply any monies or indebtedness owed to Seller against indebtedness, actual or claimed, owed by Seller to SAANKHYA LABS. If any one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal or unenforceable, the same shall not affect any other provisions herein, but these Terms and Conditions shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein. In the event of any dispute regarding the obligations of the parties under this order, the prevailing party shall recover from the other party all reasonable attorneys' fees, costs and other expenses (including without limitation such fees, costs and expenses of litigation and appeal(s) incurred by such prevailing party in enforcing any term or provision hereof).
28. Taxes as may be agreed
29. Delivery schedule as may be agreed
30. Credit period as may be agreed
31. Tax withholding as may be agreed